2014 LSBC 25
Report issued: June 12, 2014
Citation issued: December 20, 2012

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

Ronald Wayne Perrick

Respondent

Decision of the Hearing Panel on Disciplinary Action

Hearing date: April 25, 2014
Panel: David Renwick, QC, Chair, John (Woody) Hayes, Public representative, Bruce LeRose, QC, Lawyer

Counsel for the Law Society: Alison Kirby
Appearing on his own behalf: Ronald Perrick

BACKGROUND

[1] In its decision *Law Society of BC v. Perrick*, 2014 LSBC 03, this Hearing Panel found that the Respondent had committed professional misconduct in respect of all five allegations in the citation. In particular, the Hearing Panel found that:

(a) the Respondent's preparation of an assignment of shares and his witnessing of the signatures of his clients on that assignment as attorneys under a power of attorney that he knew was no longer valid due to deaths of the donors, was dishonourable conduct contrary to Chapter 2, Rule 1 of the Professional Conduct Handbook then in force, and amounted to professional misconduct;

(b) the Respondent's improper conduct in backdating the assignment of shares amounted to professional misconduct;

(c) the Respondent's conduct in failing to provide a comprehensive, timely response to communications from another lawyer with respect to the Respondent's handling and disbursement of trust funds was contrary to Chapter 11, Rule 6 of the *Professional Conduct Handbook* then in force, and amounted to professional misconduct;

(d) the Respondent's conduct in failing to provide the quality of service to his clients that would be expected of a competent lawyer in a similar situation and in particular his conduct in:

i. continuing to accept instructions from AW without considering who was the proper directing force behind the company;

ii. failing to keep the client reasonably informed of the handling and disbursements of trust funds; and

iii. failing to advise the client of the basis of his fees;

was a breach of his duty of candour to the client and contrary to Chapter 3, Rule 3 and 5 of the *Professional Conduct Handbook* then in force, and amounted to professional misconduct.

(e) the Respondent's conduct in failing to comply with the Law Society Rules and in particular in:

i. failing to enter into a written contingent fee agreement contrary to Rules 8-3 and 8-4 of the Law Society Rules, including his failure to obtain the proper instructions from his client with respect to the fee calculation and arbitrarily and unilaterally fixing the calculation and withdrawing the funds from trust, amount to professional misconduct;

ii. failing to record trust transactions within seven days, contrary to the Law Society trust accounting rules, amounted to a breach of the Law Society Rules;

iii. withdrawing funds from trust when he knew or ought to have known there was a dispute regarding his fees, amounted to professional misconduct; and

iv. withdrawing funds from trust on four occasions prior to delivering a bill, amounted to professional misconduct.

[2] The relevant facts are detailed in the Decision of the Hearing Panel on Facts and Determination.

[3] The Law Society has proposed a global sanction of a fine in the amount of $15,000 for all transgressions that constitute professional misconduct and for the one breach of the Rules. In addition, the Law Society seeks an order for costs against the Respondent totaling $24,210. The Law Society proposes that both the fine and the costs be paid on or before October 31, 2014.

[4] The Respondent does not oppose the Law Society's position on sanction and costs.

[5] The issue for this Panel to decide is whether the disciplinary action proposed by the Law Society and not opposed by the Respondent is the appropriate disciplinary action in this case.

DISCUSSION

[6] The mandate of the Law Society is to protect the public interest in the administration of justice. The authority to discipline members for professional misconduct is set out in section 38 of the *Legal Profession Act* and Rule 4-35(1)(b) of the Law Society Rules.

[7] The Panel was directed to the factors set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17 ("Ogilvie"), and the recent decision of the review panel in *Law Society of BC v. Lessing*, 2013 LSBC 29 ("Lessing").

[8] The hearing panel in *Ogilvie* set out a number of appropriate factors to be taken into account that are worth repeating here (from paragraph 10 of *Ogilvie*). While no list of appropriate factors to be taken into account can be considered exhaustive or appropriate in all cases, the following might be said to be worthy of general consideration in disciplinary dispositions:

(a) the nature and gravity of the conduct proven;

(b) the age and experience of the respondent;

(c) the previous character of the respondent, including details of prior discipline;

(d) the impact upon the victim;

(e) the advantage gained, or to be gained, by the respondent;

(f) the number of times the offending conduct occurred;

(g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

(h) the possibility of remediating or rehabilitating the respondent;

(i) the impact upon the respondent of criminal or other sanctions or penalties;

(j) the impact of the proposed penalty on the respondent;

(k) the need for specific and general deterrence;

(l) the need to ensure the public's confidence in the integrity of the profession; and

(m) the range of penalties imposed in similar cases.

[9] The review panel in *Lessing* noted that not all the *Ogilvie* factors would come into play in all cases and the weight given to these factors would vary from case to case. In this case the Panel has relied on the following *Ogilvie* factors:

Nature and gravity of the misconduct

[10] In this case, Mr. Perrick engaged in multiple serious instances of professional misconduct in order to fulfill his client's goal of completing a commercial real estate transaction and then his own goal of receiving a substantial legal fee for his services.

[11] The Law Society's mandate to protect the public interest in the administration of justice requires that the appropriate disciplinary action reflect the severity of this misconduct.

[12] A strong message must be sent to the profession that severe sanctions will result when lawyers knowingly permit the use of an expired power of attorney or backdate documents, regardless of the bona fides of the lawyer's motive and regardless of whether the documents were relied upon. To do otherwise would undermine the reputation of the legal profession as a whole.

[13] Similarly, a strong message must be sent to the profession that lawyers are required to strictly comply with the Law Society's trust accounting rules relating to the withdrawal of fees from trust and their duty to their clients to account for money taken as fees. These Rules are tied to a lawyer's fiduciary obligation to be candid with his or her client on all matters concerning the retainer, including ensuring that, in any transaction from which the solicitor receives a benefit, the client has been fully informed and properly advised.

[14] In this case, the Panel considers this *Ogilvie* factor to be a significant aggravating factor.

Professional Conduct Record

[15] Mr. Perrick was called and admitted as a member of the Law Society of British Columbia on May 17, 1971. For the last 30 years, he has practised as a sole practitioner in North Vancouver, British Columbia.

[16] In his 43 years of practice his Professional Conduct Record, which was filed as Exhibit 21 in these proceedings, revealed a Conduct Review that occurred some 21 years ago.

[17] The Panel concludes that the Respondent's mostly unblemished Professional Conduct Record during his lengthy time at the bar is an ameliorating factor.

Impact on the victims

[18] Mr. Perrick has never admitted nor acknowledged any misconduct. In order to obtain an accounting of the trust funds and a proper legal bill for the services rendered, the victims had to retain new counsel and commence lengthy and onerous court proceedings. The Panel has concluded that this is an aggravating factor.

The need for specific and general deterrence

[19] The Panel has concluded that any sanction must address the need for specific deterrence. The Respondent, even during his submissions on disciplinary action, demonstrated that he is incapable of accepting that he has done anything wrong. Accordingly, the disciplinary action must send a strong message to him that his management of this file was not only irresponsible but also unethical and cannot be condoned in the least.

[20] With respect to general deterrence, the Panel has concluded that the honour and integrity of the profession is at stake when a member practises as the Respondent did in this case, such dishonourable conduct cannot be tolerated. This *Ogilvie* factor is an aggravating factor in this case.

[21] In this matter the Panel must decide whether to accept the Law Society's position on disciplinary action, which is not opposed by the Respondent. The Panel has reviewed the many cases provided by Law Society counsel on sanction and has concluded that none of them are very helpful in addressing the appropriate disciplinary action in this case.

[22] A suspension is a significant disciplinary action that is reserved for more serious misconduct.

[23] In *Law Society of BC v. Martin*, 2007 LSBC 20 at paragraph 41, the review panel noted at paragraph 41 that when contemplating ordering a suspension, panels should consider the following factors:

> (a) whether or not the misconduct included elements of dishonesty;
>
> (b) whether or not the misconduct involved repetitive acts of deceit or negligence; and
>
> (c) whether or not the misconduct involved significant personal or professional conduct issues.
>
> ("*Martin* Factors")

[24] In this case, the Panel made a number of findings of serious professional misconduct including that:

> (a) the Respondent had engaged in dishonourable conduct that amounted to professional misconduct in that he "knowingly facilitated the use of the power of attorney in a manner contrary to the deceased donors' wishes, and contrary to the testators' expressed intentions";
>
> (b) the Respondent's conduct contained a significant element of self-interest as his fees were contingent on closing;
>
> (c) the Respondent's improper conduct in backdating the assignment of shares amounted to professional misconduct and that "he knew or ought to have known, that the assignment would be relied upon by the Company's corporate solicitor to prepare other corporate documentation to transfer the voting shares";
>
> (d) the Respondent had made "pathetic efforts" to respond to communications from AW and that his explanations and/or excuses were "untenable";
>
> (e) the Respondent's failure to account to his client about his handling and disbursement of trust funds

or to advise his client as to the basis of his fees was a breach of his fiduciary obligation to be candid regarding his retainer and keep the client fully informed of all relevant information; and

(f) the Respondent's conduct in failing to enter into a written contingent fee agreement and then purportedly billing a sum calculated on a percentage basis was "egregious".

[25] Regarding the *Martin* Factors, the Panel did not, however, make findings that the Respondent acted deceitfully or dishonestly or that he was intentionally misleading. As well, the Panel did not find that the Respondent was primarily motivated by his own self-interest. Further, there was no evidence (when the interconnected nature of the underlying misconduct is viewed as a whole) of repetitive acts of negligence or significant personal or professional conduct issues.

[26] In this instance, the Panel felt that, ordinarily, a suspension of 90 days would be warranted. However, given the age of the Respondent, his 43 year Professional Conduct Record, which is remarkably clean, the fact that there have been no further complaints or issues involving the Respondent since this matter arose in 2006 and, more importantly, given the Law Society's position that a fine was appropriate, we have concluded that a fine instead of a suspension should be imposed.

[27] The Law Society urged the Panel to consider a global assessment of sanction in this case and impose a fine in the amount of $15,000. Again, the Respondent takes no issue with this characterization nor with the amount of the fine.

[28] The Panel does not agree. The findings of professional misconduct in allegations 1 and 2 of the citation not only took place at a different time than did the rest of the matters in the citation, but they are for entirely different conduct.

[29] The improper use of powers of attorney and the back-dating of assignment of shares are extremely grave acts of professional misconduct and deserve clear and unequivocal sanctions in their own right.

[30] The remaining findings of professional misconduct (seven) and the one breach of the Rules deal specifically with improper billing practices and failing to adhere to the Law Society trust protection rules.

[31] The Panel has decided that the appropriate disciplinary action for the professional misconduct in allegations 1 and 2 of the citation is a fine in the amount $15,000.

[32] The Panel has decided that the appropriate disciplinary action for the professional misconduct in allegations 3, 4(a), 4(b), 4(c), 5(d), 5(e) and the finding of the breach of the Rules in allegation 5(c) of the citation is a $10,000 fine.

[33] The Respondent will have until October 31, 2014 to pay the total fine amounting to $25,000.

[34] The parties have agreed that the Law Society is entitled to its costs and have further agreed that those costs should be assessed at $24,210.

[35] Again, the Respondent will have until October 31, 2014 to pay these costs.

[36] In summary, our order is that the Respondent must pay the following on or before October 31, 2014:

(a) a fine of $25,000, and

(b) costs in the amount of $24,210.